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W.A.No.3112 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2024

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR,

and

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.3112 of 2024

and

C.M.P No.23748 of 2024

The Commissioner,
Udumalaipet Municipality,
Udumalaipet

... Appellant

Vs.

1. The Secretary to the Government of
Tamil Nadu Municipal Administration
and Water Supply Department,
Fort St. George, Chennai 600 009.
2. The Commissioner of Labour,
Teynampet, Chennai 600 006.
3. The Assistant Commissioner of Labour,
(Controlling Authority under the Payment
of Gratuity Act),
Coimbatore-18.



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4. Tmt. Renuka Devi
5. Thiru Venkatesh
6. Selvi Vijayalakshmi
7. Thiru Mariyappan
8. Tmt. Lakshmi
9. Tmt. Meenakshi
10. S.Sahul Hameed
11. Tmt. Palaniammal
12. Tmt. Padmavathy
13. R.Ammasai
14. Tmt. Nallamma
15. Thiru Chandran
16. Mr.Anandan
17. Mr.Ayyappan
18. Tmt. Nagalakshmi

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act 1865, praying to allow the writ appeal by setting aside the order dated 02.11.2023 made in W.P.No.24060 of 2007.

For Appellant : Mr.B.Anand

For Respondents : Mrs.V.Yamunadevi, Special Govt. Pleader
for respondents 1 to 3.



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ORDER

(Order of the Court was made by D.KRISHNAKUMAR, J.)

Assailing the order passed by the learned single Judge in W.P.No.24060 of 2024, dated 02.11.2023, the writ petitioner has filed the present appeal.

2. The appellant/writ petitioner has filed the above said writ petition seeking direction to the Commissioner of Labour, Chennai to pass final order forthwith, exempting the provisions of the Payment of Gratuity Act 1972 to all the employees of the Municipalities with effect from 01.10.1973, as per the application made by the Secretary to Government, Municipal Administration and Water Supply Department made in their letter No.16560/Na.Pa.3/99/5 dated 13.10.2000.

2.1. According to the appellant, the respondents 4 to 18 were working as sanitary workers at the Udumalpet Municipality and after their retirement, they received all the retirements benefits including death cum retirement Gratuity and other benefits. After getting entire family benefits



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and DCRG, the private respondents filed applications before the Assistant Commissioner of Labour claiming Gratuity and obtained orders in their favour.

2.2. It is contended by the appellant that, the service of the sanitary workers was regularised only from 1.10.1973, as per G.O.Ms.No.2469 (Health and Family Planning Department) dated 1.10.1973 and further, as per G.O.Ms.No.437 (Finance Pension Department) dated 23.06.1998, half of their services viz. from 01.01.1961 to 31.09.1973 were ordered to count for pension. As such, after receiving pension and other retirement benefits, they are not entitled to get gratuity, under Payment of Gratuity Act, 1972. Hence, as per Section 5 of the Payment of Gratuity Act, 1972, they have to be precluded from getting the double benefits under the guise of Gratuity.

2.3. The first respondent has addressed a letter dated 13.10.2000 to the second respondent to take immediate action, exempting the provisions of the Gratuity Act, 1972 to all the Municipalities w.e.f. 01.10.1973 under Section 5 of the Gratuity Act and vide letter dated, the second respondent



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has sought clarification, vide letter dated 09.07.2002. Having had full knowledge about the pending of the said proceedings of the government, the retired sanitary employees of most of the Municipalities rushed the Labour Commissioner and obtained orders in their favour. Further, without any justification, the third respondent also is passing the orders in favour of the applicants, who sought claim under the Payment of Gratuity Act. Hence the appellant has filed the writ petition. The said writ petition was dismissed by the learned Single and it is impugned herein.

3. Heard the learned counsel for the appellant and the learned Special Government Pleader appearing for the respondents 1 to 3 and also we have gone through the materials on record.

4. According to the appellants, the respondents 4 to 18 were received all the retired benefits and after getting the same, they approached the Commissioner of Labour seeking payment of Gratuity and obtained order in their favour, thereby, they got double benefits. Hence, it is sought to exempt the provisions of Gratuity Act as far as the employees of the Municipalities



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w.e.f. 1.10.1973. Before the learned Single Judge, the Additional Government Pleader appearing for the respondents informed that already the second respondent had addressed a letter dated 19.08.2010 to the Director of Municipality Administration and Water Supply, wherein, it was clearly envisaged that the Municipalities could not be granted exemption from the provisions of the Payment of Gratuity Act, 1972, and the same was already been informed to all the respective Municipalities and Corporations. In this regard, a detailed counter was also filed by the respondents before the learned Single Judge.

5. At this juncture, it is useful to extract Section 5 of the Payment of Gratuity Act, which runs as follows:

Power to exempt:

(1) ..

(2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of



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employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

6. The said provision clearly says that exemption of such provision shall apply, only to the cases, in which the appropriate government had issued a notification, exempting any employee/ employees of the establishment, in the opinion that such employee/employees are in receipt of Gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Here in this case, no such notification was issued by the Government, whereas, the Government had already informed the Director of Municipal Administration through its letter dated 19.08.2010 that exemption shall not be granted and the same was also informed to all the officers of the concerned Municipalities. This aspect has not been denied by the learned counsel for the appellant. Learned Single Judge, by considering all the above facts and circumstances of the case, has rightly observed as ***"It is for the Municipality to decide and frame guidelines as to what terminal benefits its employees are entitled to be benefitted with. Passing of an order under the provisions of the Gratuity Act, 1972 by the authority under the Act cannot be a ground to seek exemption under the***



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Act. If its employees are trying to unjustly enrich themselves by approaching the adjudicating authority prescribed under the provisions of the Act, 1972, it is for the petitioner to defend itself and challenge in appeal, if any adverse orders are passed. In the present case, even though orders have been passed by the adjudicating authority under the Gratuity Act as early as in the year 2007, I do not find any averment indicating any such challenge that has been made by the petitioner of the order passed by the authority." and dismissed the writ petition. Therefore, we are not inclined to interfere with the well reasoning order passed by the learned Single Judge and the writ appeal is devoid of merits and the same is liable to be dismissed.

Accordingly, this writ appeal is dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

(D.K.K.J.) (P.B.B.J.)

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